

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 7, 2016 at 3:00 p.m.

1. [15-28108](#)-E-11 WILLARD BLANKENSHIP
RLC-6

CONTINUED APPROVAL OF
DISCLOSURE STATEMENT FILED BY
DEBTOR
4-1-16 [[82](#)]

No Tentative Ruling: The Motion to Approve Disclosure Statement has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, creditors, parties requesting special notice, and Office of the United States Trustee on April 4, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Disclosure Statement is ~~XXXXXXXX~~.

JUNE 7, 2016 HEARING

To date, no supplemental papers have been filed to date.

At the hearing, ~~XXXXXX~~

MAY 26, 2016 HEARING

At the hearing, the parties reported that they have agreed to amendments, which will be filed shortly. The Debtor in Possession will file the amended plan and disclosure statement, along with a redline version for the court to review. If sufficient, the court will rule without further hearing.

MAY 18, 2016 HEARING

At the hearing, the Parties requested one further continuance to try and resolve most, if not all, of the plan issues. The court grants one final continuance.

MAY 5, 2016 HEARING

At the May 5, 2016 hearing the Debtor in Possession requested, and the appearing creditor concurred, to have the hearing continued so the parties could continue to work on agreed terms to a plan and disclosure statement.

REVIEW OF THE DISCLOSURE STATEMENT

Case filed: October 17, 2015

Background: Debtor-in-Possession is an eighty-two year old retired physician. His career involved medical research and teaching. He helped found U.C. Davis School of Medicine. Debtor-in-Possession receives monthly social security benefits of \$1,627.50 and monthly annuity benefits from a TIAA-CREF account in the amount of \$694.22. He also receives occasional dividends on account of an 8% interest in Apnea Analysis Center, Inc. A closely held California Corporation.

From October 1997 onward, Mr. Charles Hoffmeister maintained Debtor-in-Possession's home. This was a significant benefit to the Debtor-in-Possession as his career often demanded extended stays away from Laguna Beach. The agreement between the Debtor-in-Possession and Mr. Hoffmeister was that upon retirement, Debtor-in-Possession would provide Mr. Hoffmeister with a small property. After selling his Laguna Beach home, Debtor-in-Possession provided that property in the form of a small farm (39.83 acres) located in Spencer, Indiana. Debtor-in-Possession purchased the farm in 2009 for \$135,000.00, subsequently made improvements to it and harvested timber. The farm does not generate crop income and the primary revenue associated with the farm is the occasional timber sales. Mr. Hoffmeister has lived on the farm since 2009 and has maintained it. Debtor-in-Possession transferred title to Mr. Hoffmeister in June 2015. Mr. Hoffmeister has deeded his interest in the property back to Debtor-in-Possession. Spencer, Indiana is a very rural community and there is not an active market for property.

In 2008, Debtor-in-Possession decided to leave Laguna Beach and move to Davis, California. At the time, he was 74 years old. He listed and sold his residence located at 31401 Holly Drive, Laguna Beach, California to Michael Kletchko and Patrick Ruedin. Debtor-in-Possession used a licensed realtor Susan

Neely associated with Prudential a real estate brokerage firm. Mr. Kletchko and Mr. Ruedin sued Debtor-in-Possession on a variety of tort theories regarding failures to disclose defects in the former residence in the Superior Court of California, County of Orange in 2010. A trial was held in February 2015 and a judgment in the amount of \$664,000.00 for economic damages on theories of breach of contract, negligence, intentional misrepresentation, and concealment was entered on March 18, 2015. The jury specifically found that Debtor-in-Possession did not engage in the conduct with malice, oppression or fraud. The judgment was increased to include attorney's fees (\$175,000.00), costs (\$40,468.56) and interest (\$37,293.60) on October 30, 2015 for a total of \$916,762.16. The fees were reduced from \$312,272.27 and the costs were reduced from \$38,974.61. Mr. Kletchko and Mr. Ruedin filed an abstract of judgment against Debtor-in-Possession's Davis residence on July 22, 2015, within 90 days of the date of the present case. Debtor-in-Possession is seeking the avoidance of the abstract of judgment. Kletchko and Ruedin have filed a proof of claim in this case on December 22, 2015, in the amount of \$1,164,436.00. If the claim is not reduced to the amount awarded by the Orange County Superior Court on October 30, 2015, the Debtor-in-Possession will need to file a claim objection.

Creditor/Class	Treatment	
Administrative Expenses: Expenses arising in the Ordinary Course of Business After the Petition Date	Claim Amount	Estimated \$30,000.00
	Impairment	
	<p>(1) Expenses arising in the Ordinary Course of Business After the Petition Date; Estimated current at confirmation; Paid in full on the Effective Date of the Plan, or according to terms of obligation if later.</p> <p>(2) Professional Fees, as approved by the Court; Estimated to be \$30,000.00; Paid in full upon the refinance of Debtor's residence.</p> <p>(3) Clerk's Office Fees; Estimated None; Paid in full on the Effective Date of the Plan.</p> <p>(4) Other administrative expenses; Estimated None; Paid in full on the Effective Date of the Plan or according to separate written agreement</p>	
Priority Tax Claim	Claim Amount	Estimated \$4,218.19
	Impairment	
	<p>The Internal Revenue Service has filed a proof of claim for 2012 taxes in the estimated amount of \$4,218.19. The proof of claim alleges that no return was filed in 2012. Debtor-in-Possession is reviewing his records to either find a copy of the filed return or will file the return.</p>	

Class 1: Amerihome Mortgage Co. LLC	Claim Amount	
	Impairment	Unimpaired
	The secured claim of Amerihome Mortgage Co. LLC is a first priority deed of trust secured by 1304 Aspen Place, Davis, CA. This is Debtor-in-Possession's residence. Debtor-in-Possession shall continue to make monthly payments until the residence is refinanced and this claim is paid in full. It is anticipated that the refinance will occur in June 2016.	
Class 2: Michael Kletchko and Patrick Ruedin	Claim Amount	
	Impairment	
	The secured claim of Michael Kletchko and Mr. Ruedin is second priority abstract of judgment secured by 1304 Aspen Place, Davis, CA and recorded July 22, 2015. Debtor will seek to avoid the secured claim pursuant to 11 U.S.C. § 547(b)(2). To the extent allowed the unsecured claim will share pro rata with allowed Class 3 claims. Debtor estimates that the allowed unsecured claim will be \$916,762.16. Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 2 claims will be paid pro rata with allowed Class 3 Claims.	
Class 3: General Unsecured Claims	Claim Amount	
	Impairment	Impaired
	The allowed general unsecured claims will be paid as follows: Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty days of the Effective Date of this Plan, with the balance of the reverse mortgage proceeds twelve months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property estimated to be within twelve months of the Effective Date. Class 3 claims will be paid pro rata with allowed Class 2 claims.	

Class 4: Interest of the Debtor	Claim Amount	
	Impairment	Impaired
	The Debtor shall retain his interest in his post-petition social security and TIAA-CREF income. He shall also retain his interest in his residence subject to the Class 1 secured claim of Amerihome Mortgage and the contemplated reverse mortgage. The property of the estate shall revert to the Debtor upon the Plan Effective Date.	

A. C. WILLIAMS FACTORS PRESENT

- Y Incidents that led to filing Chapter 11
- Y Description of available assets and their value
- Anticipated future of the Debtor
- Y Source of information for D/S
- Y Disclaimer
- Y Present condition of Debtor in Chapter 11
- Y Listing of the scheduled claims
- Y Liquidation analysis
- Identity of the accountant and process used
- N Future management of the Debtor
- Y The Plan is attached

In re A. C. Williams, 25 B.R. 173 (Bankr. N.D. Ohio 1982); see also *In re Metrocraft*, 39 B.R. 567 (Bankr. N.D. Ga. 1984).

OBJECTIONS:

Creditors Michael Kletchko and Patrick Ruedin's Opposition

Michael Kletchko and Patrick Ruedin ("Creditor") filed an opposition on May 16, 2016. Dckt. 96. The Creditor opposes approval of the Disclosure Statement on the following grounds:

1. The Plan cannot be confirmed which warrants the court denying the Disclosure Statement. The Plan is allegedly not feasible because:
 - a. The Plan names Creditors as second priority and that

they will share pro rata with allowed Class 3 claims, however, Debtor-in-Possession does not explain who the Class 3 claimants are or how much they are owed.

- b. There is no evidence that the Debtor-in-Possession will be able to pay the administrative claims, totaling \$30,000.00, on the effective day. Additionally, there is no explanation of the administrative claims in the Disclosure Statement.
 - c. The Plan states that \$132,567.00 will be distributed to Class 2 and 3 in July 2016 and \$168,635.00 in July 2017 but does not state how the pro rata share distribution will apply.
 - d. The Disclosure Statement is unclear whether or not a homestead exemption, however, the exhibit of the Disclosure Statement does imply that a homestead exemption will apply.
 - e. The Plan is uncertain and speculative because the proposal to various creditors will be based upon several possible alternatives.
2. The Disclosure Statement does not contain adequate information. The Creditor asserts that the Disclosure Statement understates their unsecured claim.
3. There is insufficient information or evidence that the Plan passes the liquidation analysis. The Creditor asserts that there is no basis for any of the valuations in the Disclosure Statement. The Creditor asserts because there is no breakdown of the liquidation in the Disclosure Statement, there is not enough adequate information

DISCUSSION:

1. Before a disclosure statement may be approved after notice and a hearing, the court must find that the proposed disclosure statement contains "adequate information" to solicit acceptance or rejection of a proposed plan of reorganization. 11 U.S.C. § 1125(b).

2. "Adequate information" means information of a kind, and in sufficient detail, so far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of the holders of claims against the estate to make a decision on the proposed plan of reorganization. 11 U.S.C. § 1125(a).

3. Courts have developed lists of relevant factors for the determination of adequate disclosure. *E.g., In re A. C. Williams, supra.*

4. There is no set list of required elements to provide adequate information per se. A case may arise where previously enumerated factors are not sufficient to provide adequate information. Conversely, a case may arise

where previously enumerated factors are not required to provide adequate information. *In re Metrocraft Pub. Services, Inc.*, 39 B.R. 567 (Bank. N.D. Ga. 1984). "Adequate information" is a flexible concept that permits the degree of disclosure to be tailored to the particular situation, but there is an irreducible minimum, particularly as to how the plan will be implemented. *In re Michelson*, 141 B.R. 715, 718-19 (Bankr. E.D. Cal. 1992).

5. The court should determine what factors are relevant and required in light of the facts and circumstances surrounding each particular case. *In re East Redley Corp.*, 16 B.R. 429 (Bankr. E.D. Pa. 1982).

Determination of whether there is "adequate information" is a subjective determination made by the bankruptcy court on a case by case basis. *In re Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988), cert. denied 488 U.S. 926 (1988). Non-bankruptcy rules and regulations concerning disclosures do not govern the determination of whether a disclosure statement provides adequate information. 11 U.S.C. § 1125(d), *Yell Forestry Products, Inc. v. First State Bank*, 853 F.2d 582 (8th Cir. 1988).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The hearing for approval of the disclosure statement having been conducted by the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that ~~xxxxxx~~.